

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

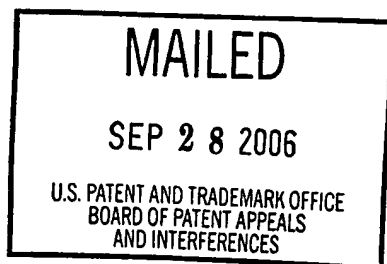
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte ROGER BREDOW, JON DUNFEE, JAMES EVERETT SAPP  
and MATTHEW BUNKLEY TREVATHAN

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Appeal No. 2006-1346  
Application No. 09/845,542

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ON BRIEF

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Before OWENS, CRAWFORD, and LEVY, Administrative Patent Judges.  
CRAWFORD, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on appeal from the examiner's final rejection of claims 1 to 21,  
which are all of the claims pending in this application.

The appellants' invention relates to a method of displaying a shopping summary to a shopper who accesses an electronic commerce website (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

#### The Prior Art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Sherr et al. (Sherr)

2002/0154157

Oct. 24, 2002  
(filed Apr. 6, 2001)

#### The Rejection

Claims 1 to 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sherr in view of Official Notice.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed December 2, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed April 21, 2005) and reply brief (filed September 7, 2005) for the appellants' arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the

respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The examiner has rejected the claims under 35 U.S.C. § 103 as being unpatentable over Sherr in view of Official Notice. We have evaluated this rejection on the basis of the following guidelines provided by our reviewing court: The examiner bears the initial burden of presenting a prima facie case of obviousness See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art See In re Bell, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). This is not to say, however, that the claimed invention must expressly be suggested in any one or all of the references, rather, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art See Cable Electric Products, Inc. v. Genmark, Inc., 770 F.2d 1015, 1025, 226 USPQ 881, 886-87 (Fed. Cir. 1985).

The examiner finds that Sherr teaches the invention as claimed including displaying an order page initiated by a right mouse click. The examiner concludes:

It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Sherr, a shopping summary as claimed in the instant invention, because this would permit buyers of the system to use the right click option for any presentation of information that was considered important enough to command the user of the right click option.

The appellants argue that the cited prior art does not disclose showing a shopping summary in response to detecting a right click.

We find that Sherr discloses that desired information may be displayed at the detection of a click of a mouse and that this click may be a right or left click [0062, 0066, 0071, 0085]. The difference argued by the appellants i.e. that the information displayed upon detection of the right mouse click (shopping summary) relates only to the specific information which is displayed at the detection of the right click.

The specific content of the display will not patentably distinguish the subject matter. Once the apparatus and capabilities of displaying information upon a detection of a right mouse click are taught by Sherr, the particular information displayed does not distinguish the invention from the prior art. The only difference is in the content of the display not the structure of the apparatus permitting the display. See In re Gulack, 703 F.2d 138, 1385, 217 USPQ 401, 404 (Fed.Cir. 1983) where the critical question was whether there exists any new and unobvious functional relationship between the printed matter and a substrate. In the instant case, there is clearly no unobvious functional relationship between the content of the display (printed matter) and the apparatus (substrate) which permits the display of the content. One type of textual content (e.g. order page) would have been equally obvious over any of other type of textual content, as far as the structure is concerned, because the content in no way changes the apparatus structure and/or function. We agree with the appellants that there is a cause

and effect relationship between the detection step and the showing step (see reply brief at page 11). However, in our view, there is no relationship between the content of what is displayed and the display itself. As such, the contents of the display alone will not render the claim patentable.

In any case, Sherr discloses that upon the detection of a right click, an order page is displayed [0071]. The order page is depicted in Fig. 10 clearly displays that the Jerry Maguire movie is being ordered. This order page, in our view, is a shopping summary as broadly claimed. We further note that Sherr discloses that a user may build a list of orders prior to checkout which would have suggested to a person of ordinary skill in the art that the order page may include a summary of a plurality of items being purchased.

In view of the foregoing, we will sustain this rejection as it is directed to claim 1.

We will also sustain the examiner's rejection of claim 4 because the appellants have made similar arguments in regard to the patentability of claim 4 as the arguments to claim 1.

In regard to claim 2, the appellants argue that the cited prior art does not disclose or suggest that the act of showing a shopping summary comprises accessing a second web page.

We do not agree because the order page depicted in Figure 10 is another web page. Therefore, we will sustain the examiner's rejection of claim 2. We will also

sustain the examiner's rejection of claim 5 because the appellants have made similar arguments with respect to this claim.

In regard to claim 3, the appellants argue that Sherr does not disclose a web page overlay that includes a shopping summary.

We agree with the examiner that Sherr suggests the subject matter of claim 3 by disclosing that a streaming box 206 can be used to display additional information to the user, such as a page to purchase the content [0066]. Therefore, we will sustain the examiner's rejection of claim 3. We will sustain the examiner's rejection of claim 6 for the same reasons.

In regard to claims 7, 8, and 9, appellants argue that the prior art does not disclose or suggest displaying a bidding summary. We will sustain this rejection because as we stated above the exact information displayed in response to the detection of a right click does not patentably distinguish the claimed subject matter. In addition, as Sherr discloses displaying an order page with a list or summary of items purchased, a person of ordinary skill in the art would have been motivated to display any type of summary desired.

In regard to claim 10, the appellants argue that there is no disclosure of deriving a screen location from screen coordinates of a computer mouse.

We agree with the examiner that paragraph 0067 of Sherr discloses detecting a screen location from screen coordinates of a computer mouse in that Sherr discloses [0067] that a cursor is placed on a image and a mouse is clicked to activate the image.

We will therefore, sustain the examiner's rejection of claim 10.

In regard to claims 11 to 14, appellants repeat the arguments made for claims 1 and 7 to 9. We will therefore, sustain the examiner's rejection of these claims for the reasons given above in regard to the examiner's rejection of claim 1 and 7 to 9.

In regard to claim 15, which recites that the shopping summary is retired upon detection of a right click if the shopping summary is shown and turned on upon detection of a right click if the shopping summary is not shown, the examiner takes Official Notice that turning programs on and off utilizing a single on/off switch activation mechanism such as a mouse click is old and well known in the art and such would have been obvious to show information that was currently needed and not show information that was not currently needed.

The appellants argue that there is no motivation to modify the Sherr system so as to include the subject matter of claim 15.

We do not agree. Sherr discloses that information can be displayed upon the detection of a right click as we discussed above. Sherr also discloses that the information displayed may be additional information for example, about the content to be purchased [0011], or links to websites to purchase a physical copy of the content

[0066], or an order page [0071]. In our view, a person would have been motivated to turn the display off after the display served its purpose, for example after obtaining further information about the content. In addition, Sherr also discloses that a user can build a list of orders which clearly suggests turning the order page on to build a shopping summary and off to browse the content to further place items in the order.

In view of the foregoing, we will sustain the examiner's rejection of claim 15.

Claim 16 depends from claim 15 and further recites that the shopping summary is included in a second web page. Appellants argue that Sherr does not disclose this second web page. We will sustain the rejection as to this claim for the reasons stated above in our discussion of claims 15 and 2.

Claim 17 depends from claim 15 and further recites that the shopping summary is included in an overlay upon the electronic commerce web page. Appellants argue that Sherr does not disclose this overlay.

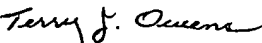
We will sustain the rejection as it is directed to claim 17 for the reasons stated above in our discussion of claims 15 and 3.

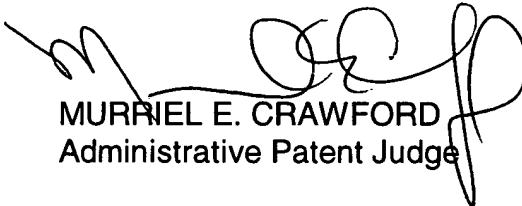
Appellants argue with respect to claims 18 to 21, which depend from claim 15, that Sherr does not disclose that the information displayed is a shopping cart, an auction bid summary, a barter summary or a rental summary as recited in claims 18 to 21. We will sustain this rejection for the reasons stated above in our discussion of claims 15 and claims 7 to 9.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal  
may be extended under 37 CFR § 1.136(a).

AFFIRMED

  
TERRY J. OWENS  
Administrative Patent Judge

  
MURRIEL E. CRAWFORD  
Administrative Patent Judge

  
STUART S. LEVY  
Administrative Patent Judge

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